



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 22 2012

REPLY TO THE ATTENTION OF:

WN-16J

**CERTIFIED MAIL 7009 1680 0000 7635 8750**  
**RETURN RECEIPT REQUESTED**

C. A. Burggraf, President  
Peabody Midwest Mining, LLC  
c/o Corporation Service Company  
Registered Agent  
251 East Ohio Street, Suite 500  
Indianapolis, Indiana 46204

Re: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C.  
§ 1318, Regarding Peabody Midwest Mining, LLC - Bear Run Mine, Indiana  
Docket No. V-W-12-308-09

Dear Mr. Burggraf:

This letter concerns discharges of pollutants into waters of the United States associated with the Bear Run Mine, operated by Peabody Midwest Mining, LLC, located in southwestern Indiana.

This letter and the enclosures are a request for information issued pursuant to Section 308(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1318(a). Section 308 of the Act authorizes the U.S. Environmental Protection Agency to require those subject to the Act to furnish information, conduct monitoring, sample effluents, and make reports as may be necessary to carry out the objectives of the Act. Enclosure 1, which is hereby made part of this letter, details the information Peabody Midwest Mining, LLC ("Peabody" or "you") must provide to EPA. Please submit your written responses in accordance with the instructions in section I of the Information Request, which provides response deadlines and the address where information should be submitted.

This request for information requires Peabody to, among other things, conduct biological, physical habitat and water quality monitoring and sampling in order to assess the impacts of discharges from the Bear Run Mine to waters of the United States, in furtherance of the objectives of the Act. EPA encourages Peabody to consult with EPA on any issues and questions regarding the development of the requested monitoring and sampling plans. Please provide a signed written confirmation of your intention to comply with this request, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, at the address provided in Enclosure 1, within five business days of receipt of this Information Request.

Your responses to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2, which is hereby made part of this letter, provides a Statement of Certification for this purpose.

Failure to respond fully and truthfully to this information request may result in enforcement proceedings under Section 309 of the Act, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to you (see Enclosure 3).

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you (see Enclosure 4). Any decision to seek compliance assistance at this time, however, does not relieve you of your obligation to EPA nor does it create any new rights or defenses, and will not affect any EPA decision to pursue enforcement action.

If you have questions regarding this information request, please contact Janet Pellegrini, at (312) 886-4298, or have your legal counsel contact Kasey Barton, Assistant Regional Counsel, at (312) 886-7163.

Sincerely,



for Tinka G. Hyde  
Director, Water Division

Enclosures

cc: P. Higginbotham, IDEM  
John W. Watson, Esq.

**ENCLOSURE 1**  
**CLEAN WATER ACT (CWA) SECTION 308 INFORMATION REQUEST**

**I. Instructions**

1. Please provide a signed written confirmation, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, within five business days of receipt of this Information Request, of your intention to comply with this request.
2. Peabody Midwest Mining, LLC (Peabody) must submit to EPA for review and comment draft water quality, physical habitat, and biological sampling plans consistent with the requirements of this request within 30 days from the date of receipt of this request.
3. Peabody must submit to EPA final water quality, physical habitat, and biological sampling plans within 15 days from the date of receipt of any comments received from EPA, or within 15 days from the date of receipt of notice that EPA has completed a review of the plans. The final sampling plans must address any comments received by EPA.
4. Peabody must submit to EPA interim water quality sampling results every 30 days after water quality sampling begins, until the final water quality sampling report is submitted.
5. Peabody must submit all other information required by this request to EPA no later than November 19, 2012.
6. Identify the person(s) responding to each Information Request.
7. All documents responsive to the Information Request should be provided in electronic format.
8. Respond to all requests using the following formats, as appropriate: MS Word Document, MS Excel Spreadsheet, MS Access Database, Geographic Information System (GIS) data, Adobe Acrobat Reader PDF format, or pictures and images in JPEG format. Data may be submitted on CD-ROMs or other electronic formats acceptable to EPA.
9. For data that is requested and/or submitted in tables, the data shall be accumulated and organized into a clearly labeled and annotated MS Excel Spreadsheet. The spreadsheet should be formatted so that it can be printed on an 8.5" x 11" sheet of paper. The spreadsheet can be formatted to print on an 8.5" x 14" or 11" x 17" sheet of paper if doing so offers additional clarity.
10. All records and documents that you create and/or rely upon in responding to any part of this request must be maintained for a period of at least 3 years from the date of the sample, measurement, or report, unless this time period is extended at the request of EPA in writing. Records of monitoring information shall include: the date, exact place, and time of sampling or measurements; the dates analyses were performed, the individual(s) who performed the analyses, the analytical techniques or methods used, and the results of such analyses.
11. In answering each Information Request, identify all documents and persons consulted, examined, or referred to in the preparation of each response. If any protocols are used for sampling and/or analysis in addition to those identified in section III, below, provide true and accurate copies of such documents.

12. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Information Request and its subpart to which it responds.
13. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of its response that any portion of the submitted information is false or misleading, you must notify EPA thereof as soon as possible.
14. Your response to this Information Request must be accompanied by a certificate that is signed and dated by you or the person who is duly authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2 provides a Statement of Certification for this purpose.
15. All information submitted pursuant to this Information Request must be submitted to:

U.S. Environmental Protection Agency – Region 5  
Attention: Janet Pellegrini  
NPDES Programs Branch, WN-16J  
77 West Jackson Boulevard  
Chicago, IL 60604  
pellegrini.janet@epa.gov  
312-886-4298 (phone)  
312-692-2436 (fax)

## **II. Definitions**

All terms used in this Information Request that are not defined below shall be defined as they are defined in Section 502 of the CWA, 33 U.S.C. § 1362, and regulations at 40 C.F.R. § 122.2 and 40 C.F.R. Part 434. Unless otherwise indicated, the following definitions shall apply strictly for the purposes of this Information Request:

1. “Bear Run Mine” shall include all mining and related operations associated with Bear Run Mine, located in Sullivan County, Indiana.
2. “Document” includes any writings, drawings, graphs, charts, photographs, phone records, field records, operation logs/notes/field rounds sheets, electronic mail, facsimile, Supervisory Control and Data Acquisition (SCADA) information, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. Documents must be produced as they are kept in the usual course of business.
3. “Mining operation” shall mean the following: any surface and/or underground mine, a coal processing and preparation plant, a coal transportation facility, and all associated operations.
4. “NPDES” or “NPDES Permit” shall mean National Pollutant Discharge Elimination System permit or any state permit issued pursuant to the NPDES program that Indiana is authorized to administer.

5. "Process water" means water (including storm water) that comes in contact with coal preparation plants and associated areas, and active and post mining areas (including abandoned mine areas).
6. "Point source" means any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container.
7. "SMCRA" or "SMCRA Permit" shall mean any permit issued by Federal or State entities pursuant to the Surface Mining Control and Reclamation Act and shall include all issued and proposed amendments to the SMCRA permit.
8. "State" means the State of Indiana.
9. "You" and "your" shall mean Peabody Midwest Mining, LLC and/or any company, entity, or corporation that has directed work at a Peabody Midwest Mining, LLC mining operation, and any parent, affiliate, subsidiary or related entity of Peabody Midwest Mining, LLC.
10. "Busseron Creek" shall mean the Watershed Assessment Unit for Busseron Creek, with Hydrologic Unit Code 0512011115.
11. "Black Creek" shall mean the Watershed Assessment Unit for Black Creek, with Hydrologic Unit Code 0512020206.
12. "Indian Creek" shall mean the Watershed Assessment Unit for Indian Creek, with Hydrologic Unit Code 0512020208.
13. "Maria Creek" shall mean the Watershed Assessment Unit for Maria Creek, with Hydrologic Unit Code 0512011118.
14. "Coal refuse pile area" as defined in 40 C.F.R. § 434.11(p), means any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.
15. "Coal preparation and coal preparation plant associated areas" as defined in 40 C.F.R. § 434.20, means discharges from coal preparation plants and coal preparation plant association areas, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite and anthracite. *See also* 40 C.F.R. § 434.11 (e), (f) and (g).
16. "Mine drainage areas" as defined in 40 C.F.R. § 434.11(h) means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.
17. "Active mining area", as defined in 40 C.F.R. 434.11(b), means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
18. "Reclamation areas" as defined in 40 C.F.R. § 434.11(l), means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.



### III. Information Request

1. Develop and implement final water quality, physical habitat, and biological monitoring and sampling plans for the following watersheds and associated waterways: Busseron Creek, Black Creek, Indian Creek and Maria Creek. These plans shall be developed and implemented in accordance with all requirements in nos. 2 through 5, below.
2. Develop and submit to EPA for review and comment draft water quality, physical habitat, and biological monitoring and sampling plans that include the information described in parts (A) through (E), below. Each sampling plan shall be drafted in accordance with the applicable testing and sampling methods at 40 C.F.R. Part 136, as well as the Indiana Department of Environmental Management's *Survey Sections Field Procedure Manual. Revised June 2002*, Beckman T, Editor, IDEM, Office of Water Quality, Assessment Branch, Surveys Section, Indianapolis, Indiana, IDEM 032/02/055/2002. Each plan must include, but is not limited to, the following information:
  - A. Sampling locations identified on a map that includes all process and storm water discharge locations and associated outfall numbers where applicable; all mine features; location of impoundments, current site contours, and reclaimed areas;
  - B. Description of the sampling and testing methods to be used with specific reference to the use of the protocols and requirements identified in this request;
  - C. Identification of the dates when the monitoring and sampling will be conducted and the frequency of samples;
  - D. Laboratories that will be used to analyze sampling results; and
  - E. Identification of personnel to be employed for the sampling and monitoring, and a description of the qualifications of each person to perform the sampling and monitoring.
3. The water quality monitoring and sampling shall address the components listed below, in accordance with the criteria listed below:
  - A. Perform ambient water quality sampling.
    1. Sampling locations and frequency:

Water quality monitoring and sampling must be developed and implemented for areas that have permitted NPDES outfalls within Peabody's SMCRA Permit S-256 amendment nos. 1, 2, 3 and 4, at points downstream of the NPDES outfalls, but upstream from any tributaries that may dilute the samples. Sampling locations should be selected based on the following criteria:

      - a. A minimum of three sample locations where no mining activities have occurred from areas within SMCRA Permit S-256 amendment no. 5.
      - b. Sampling locations downstream from all processing plant outfalls, including NPDES outfalls 061 and 062, (this includes NPDES outfalls from sedimentation pond basins that receive coal processing plant waste and/or discharge).

- c. For each amendment area within SMCRA Permit S-256, select at least one representative sample location downstream from a NPDES outfall categorized as alkaline and undetermined, including NPDES outfall 052, for each of the following receiving streams: Buttermilk Creek, Black Creek, Middle Fork Creek, Spencer Creek, Pollard Ditch, and Maria Creek. (For example, Buttermilk Creek has a total of four NPDES outfalls categorized as alkaline: #001, #003R, #016R and #046. Downstream samples are required for one of those listed outfalls).
- d. Each sample location must be selected based on the priority system below. Each sample location must capture one of the following waste categories, listed in order of descending priority: coal refuse pile; coal preparation plant areas and associated areas (if any exist in addition to NDPEs outfalls #061 and #062); controlled surface mine drainage (run-off from active mining areas); and reclamation areas. (For example, within Buttermilk Creek's alkaline outfalls, determine whether any of those outfalls serves a priority 1 area: "coal refuse pile." If so, then that outfall must be selected as a sampling location. If none of the four outfalls are in that category, then select an outfall that is serving a Priority 2 area, and so on). Complete and include the chart below in the sampling plan:

Amendment Area \_\_\_\_\_

Receiving stream /Amendment Area/Outfall Category	Priority 1. Coal refuse pile (if not present , move to select next available process discharge)	Priority 2. Coal preparation plant & associated areas (if not present , move to select next available process discharge)	Priority 3. Controlled surface mine drainage areas (if not present , move to select next available process discharge)	Priority 4. Reclamation areas (if not present , move to select next available process discharge)
Buttermilk Creek /S-256- / alkaline outfall				
Buttermilk Creek / S-256- /undetermined outfall				
Black Creek / 256- /alkaline outfall				
Black Creek / 256- /undetermined outfall				
Middle Fork Creek – alkaline outfall				
Middle Fork Creek –				

undetermined outfall				
Spencer Creek – alkaline outfall				
Spencer Creek – undetermined outfall				
Pollard Ditch – alkaline outfall				
Pollard Ditch – undetermined outfall				
Maria Creek – alkaline outfall				
Maria Creek – undetermined outfall				

- e. For all sampling locations selected, indicate the status of mining activity, including but not limited to one of the categories specified above, on the sampling location map and on the data tables with the sampling results (e.g., active mining, post-mining, reclaimed, etc.).

## 2. Protocols:

- a. T. Beckman, Editor, 2002. *Surveys Section Field Procedure Manual. Revised June 2002.* IDEM, Office of Water Quality, Assessment Branch, Surveys Section, Indianapolis, Indiana. IDEM 032/02/055/2002. This document can be found at: <http://monitoringprotocols.pbworks.com/f/IDEM+SurveysSOP2002.pdf>.
- b. T. Bowren, S. Ghiasuddin, 2004. *Quality Assurance Project Plan for Indiana Surface Water Quality and Total Maximum Daily Load Program. Revision 3.* IDEM, Office of Water Quality, Assessment Branch, Quality Management System, Indianapolis, Indiana. IDEM/100/29/338/073/2004. This document can be requested through IDEM at: [http://www.in.gov/idem/files/tox\\_chem\\_qapp\\_iwq.pdf](http://www.in.gov/idem/files/tox_chem_qapp_iwq.pdf).

## 3. Sampling requirements:

- a. Collection method: Surface water shall be collected as either a 24 hour composite sample or a series of grab samples collected over a 24 hour period and shall be collected from the upper 12 inches of surface water at each sampling location.
- b. Sampling frequency: for each sampling location, samples should, at a minimum, be taken for four separate days and include a range of flow conditions (e.g., dry weather, low flow and high flow).



- c. Sampling parameters: samples shall be collected to test for all parameters as required for effluent sampling, as described below. Field measurements of dissolved oxygen, pH, temperature, and specific conductance will be made using water quality probe meters. Water quality probe continuous recorders will be placed at all selected sampling locations to evaluate diurnal measurements of dissolved oxygen, pH, temperature, and conductivity.
- d. At least half (minimum of 2 days) of the ambient water quality sampling must be conducted at the same time of the effluent sampling specified below.

B. Perform whole effluent toxicity (WET) testing and analysis.

1. Protocol:

For chronic toxicity testing:

- a. USEPA. 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition. EPA-821-R-02-013.

2. Sampling requirements:

WET testing shall be conducted at a selection of NPDES outfalls that must include:

- a. For each of Peabody's SMCRA Permit S-256 amendment areas nos. 1, 2, 3 and 4, all processing plant outfalls (NPDES outfalls from sedimentation pond basins that receive coal processing plant waste and/or discharge); and at least one representative outfall for each of the following outfall categories: alkaline, undetermined and acidic.
- b. One WET test shall be run for each processing plant NPDES outfall and subset of outfalls selected. Chronic toxicity testing is appropriate for low dilution waters with extended or continuous discharge.
- c. The test organisms must be *Ceriodaphnia dubia*, and fathead minnows. Samples must not be filtered.

C. Perform effluent sampling and analysis.

1. Protocols:

Effluent sampling and analysis must include the following list of parameters:

- a. Cations: calcium, magnesium, sodium, and potassium.
- b. Anions: Chloride, sulfate, bicarbonate, and phosphate.

- c. Metals: Mercury, iron, zinc, selenium, manganese, aluminum, cadmium, vanadium, and chromium. Mercury analysis must use EPA sampling Method 1669 and analytical Method 1631E. Selenium analysis must use low level methods such that the quantification level is 1.0 ug/L or lower. All metal sampling and analysis must include methods for both dissolved and total metals.
  - d. Additional sampling parameters: pH, TDS- total dissolved solids and specific conductance.
  - e. Analytical methods shall be conducted in accordance with 40 C.F.R. Part 136 and T. Beckman, Editor, 2002. *Surveys Section Field Procedure Manual. Revised June 2002*. IDEM, Office of Water Quality, Assessment Branch, Surveys Section, Indianapolis, Indiana. IDEM 032/02/055/2002.
2. Sampling requirements:
- a. Sampling shall be conducted during discharge and be performed utilizing the 24 hour composite sampling method. The 24 hour composite sampling can be conducted through either of these methods: automated samplers or as a specified number of aliquots (grabs) collected over a 24 hour period from which one analytical result is reported. A “no flow” situation is not considered to be a sample of the discharge.
  - b. A minimum of 20 separate sampling events, minimum of 2 per month, must be taken per each NPDES outfall. If the number of events through August 2012 is less than 20, then samples must be taken for all discharge events after that date. The sampling events must be representative of the discharge and should include a range of discharge types, including dry weather, low flow and high flow discharges that occur during wet weather/ precipitation events. Precipitation amounts and any flow conditions must be recorded per each sampling event. Provide an estimated flow rate during each event.

D. Perform field quality control sampling.

1. Protocols:

In addition to meeting all of the quality assurance and quality control requirements referenced above, including but not limited to 40 C.F.R. Part 136, the following shall be used with regard to all field quality control sampling:

- a. IDEM Survey Section Field Procedure Manual, the IDEM Assessment Branch Summary of Protocols: Probability Based Site Assessments referenced in 2(A) above. This document can be found at:  
<http://monitoringprotocols.pbworks.com/f/IDEM+sum+of+protocols.pdf>

2. Sampling requirements:

- a. This includes the following: 10 percent of the water samples shall be collected as field duplicates. One water quality probe monitoring location will have two instruments placed in the waterway as field duplicates. Field blanks shall occur at a minimum of 5 percent of the water samples. Field instruments shall be calibrated daily, using manufacturer guidelines and requirements noted above. Follow appropriate methods based on sampling protocols such as: field duplicates, blanks, daily calibration.
4. The biological monitoring and sampling shall address the component listed below, in accordance with the protocols and the sampling requirement listed below:

A. Perform a biological community assessment.

1. Sampling location and frequency:

Biological monitoring and sampling must be developed and implemented for any areas that were not previously assessed and submitted to EPA pursuant to EPA's October 12, 2011 information request under Section 308 of the CWA issued to Peabody. Specifically, biological monitoring and sampling must be developed and implemented at points immediately downstream from the NPDES outfalls within Peabody's SMCRA Permit S-256 amendment nos. 1, 2, 3 and 4, but upstream from any tributaries that may dilute the sample. All biological sampling must be conducted in mid-summer of 2012.

2. Protocols:

For fish sampling:

- a. Indiana Department of Environmental Management (IDEM) Office of Water Quality, Assessment Branch, *Summary of Protocols: Probability Based Site Assessment*, Draft, July 28, 2005. See Section 5.0: Fish Community Assessment. This document can be found at:  
<http://monitoringprotocols.pbworks.com/f/IDEM+sum+of+protocols.pdf>.
- b. U.S. Environmental Protection Agency, *Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates and Fish, Second Edition*. EPA 841-b-99-002. U. S. Environmental Protection Agency; Office of Water, Washington, D.C.

For macroinvertebrates sampling:

- a. IDEM Office of Water Quality, Watershed Planning and Assessment Branch, Biological Studies Section, Multi-habitat (MHAB) *Macroinvertebrate Collection Procedure* (S-001-OWQ-W-BS-10-T-R0), Technical Standard Operating Procedure, October 30, 2010. This document can be found at:  
<http://monitoringprotocols.pbworks.com/f/S-001-OWQ-W-BS-10-SR0.pdf>.

- b. U.S. Environmental Protection Agency, *Rapid Bioassessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates and Fish, Second Edition*. EPA 841-b-99-002. U. S. Environmental Protection Agency; Office of Water, Washington, D.C.
3. Sampling requirement:
- a. Macroinvertebrates shall be collected from their natural habitats, and not on artificial samplers.
5. The physical habitat monitoring and sampling shall address the component listed below, in accordance with the protocols and the sampling requirements listed below.

A. Perform a stream physical habitat evaluation.

1. Sampling location and frequency:

Physical habitat monitoring and sampling must be developed and implemented for any areas that were not previously assessed and submitted to EPA pursuant to EPA's October 12, 2011 information request under Section 308 of the CWA issued to Peabody. Specifically, physical habitat monitoring and sampling must be developed and implemented at points immediately upstream and downstream from the NPDES outfalls within Peabody's SMCRA Permit S-256 amendment nos. 1, 2, 3 and 4. Sampling should occur as close to the outfalls as possible but remain outside any area of turbulent mixing, and be conducted during stream flow conditions that resemble discharge conditions. The downstream sampling locations must be upstream from any tributaries that may dilute the sample.

2. Protocols:

Physical habitat shall be evaluated using the Qualitative Habitat Evaluation Index (QHEI), as appropriate, used by IDEM for streams and rivers in Indiana, as referenced below:

The following shall be used with regard to habitat assessment protocols:

- a. Qualitative Habitat Evaluation Index (QHEI); Rationale, Methods, and Application (Rankin 1989).

The following shall be used with regard to habitat evaluation protocols:

IDEM Office of Water Quality, Assessment Branch, Biological Studies Section, *Biological Studies Section Qualitative Habitat Evaluation Index (QHEI)*, S-001-OWQ-A-BS-06-S-R1, Draft December 11, 2006. This document can be found at:  
<http://monitoringprotocols.pbworks.com/f/IDEM+QHEI+SOP.pdf>

3. Sampling requirements:
  - a. One sampling event per each NPDES outfall location specified in no. 1(A), above, shall be conducted to characterize the stream morphology and substrate conditions. A sampling event consists of both upstream and downstream sampling.
  - b. Bench notes and photographic evidence for each sampling event shall be recorded and submitted as part of the report described in no. 6, below.
6. Produce and submit a detailed report for the water quality, physical habitat, and biological monitoring and sampling in accordance with the requirements identified in this request. The reports should address each component listed above, and should include all sample results and analyses.
7. Provide a copy of all biological monitoring and sampling data for SMCRA Permit S-256 amendment nos. 1, 2, 3 and 4, that was not previously submitted to EPA pursuant to EPA's October 12, 2011 information request under Section 308 of the CWA issued to Peabody.
8. Provide a narrative and flow map/diagram that identifies the below listed areas where process water is generated and describes/illustrates how the water is conveyed (e.g., pipe, overland flow) and managed (e.g., pond/impoundment, discharged through outfall #, overland flow to surface water/wetland, infiltration, etc.) for the Bear Run Mine:
  - A. Coal preparation plant areas and associated areas (excluding coal refuse piles);
  - B. Active mine areas with a pH greater than 6 prior to treatment;
  - C. Active mine areas with a pH less than 6 prior to treatment;
  - D. Wastewater from coal refuse piles;
  - E. Controlled surface mine drainage wastewater;
  - F. Non-controlled surface mine drainage wastewater;
  - G. Steep slope removal areas; and
  - H. Reclamation areas.
9. Provide a table that lists all process water discharge locations in no. 8, above, and identify:
  - A. Outfall numbers;
  - B. NPDES permit number for discharge locations;
  - C. Date range of operation;
  - D. Description (e.g., dry weather, discharge for pond #, etc.);
  - E. Latitude/longitude of discharge location;
  - F. Name of receiving water;
  - G. How the discharge is conveyed to the receiving water (e.g., ditch or other manmade conveyance, overland flow, etc.); and
  - H. Whether the discharge location is within 500 yards upstream of a water supply intake.

10. Provide a table that identifies by name all ponds/impoundments that are used to manage process water. For each pond/impoundment, include the areas identified in no. 8, above, that contribute process water. For each pond/impoundment, identify whether any areas contribute process wastewater from mining operations associated with mines other than the Bear Run mine.
11. For each pond/impoundment, provide:
  - A. Design plan, cross section, and basis for design that also includes:
    1. A water balance to account for flows entering and exiting the pond/impoundment during dry weather as well as wet weather events;
    2. Each permitted (by number) and unpermitted outflow location; and
    3. Sampling locations during dry and/or wet weather conditions.
  - B. A narrative describing each outflow location and associated sampling point and also identifies how water flows out of each location identified in 11(A), above, (e.g., pipe(s), porous material, overflow, etc.).
  - C. A description of how the pond/impoundment will function during dry weather and wet weather including the 1 year, 24 hour; 3 year, 24 hour; or the 10 year, 24 hour storm events, if applicable.



## ENCLOSURE 2

### STATEMENT OF CERTIFICATION

I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## ENCLOSURE 3

### Confidential Business Information (CBI) Assertion and Substantiation Requirements

#### Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the Enclosed letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential" and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 308 of the CWA, and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information," given that disclosure of such information to the general public may constitute an invasion of privacy.

#### Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question 1 above?

- A. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- B. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
- C. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- D. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Please note that effluent data provided under Section 308 of the CWA, 33 U.S.C. § 1318, is not entitled to confidential treatment under 40 C.F.R. Part 2. "Effluent data" means, with reference to any source of discharge of pollutant (as that term is defined in Section 502(6) of the CWA, 33 U.S.C. 1362(6)):

Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (of of any pollutant resulting from any discharge from the source), or any combination of the foregoing;

Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and

A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.302 (a)(2)(i)(A), (B) and (C).

**ENCLOSURE 4**

## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### EPA's Small Business Websites

Small Business Environmental Homepage - [www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

Small Business Gateway - [www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

EPA's Small Business Ombudsman - [www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888

#### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/  
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

#### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

#### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

#### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

#### Automotive Service and Repair

[www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK

#### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

#### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

#### Education

[www.campuserc.org](http://www.campuserc.org)

#### Food Processing

[www.fpeac.org](http://www.fpeac.org)

#### Healthcare

[www.hercenter.org](http://www.hercenter.org)

#### Local Government

[www.lgean.org](http://www.lgean.org)

#### Metal Finishing

[www.nmfric.org](http://www.nmfric.org)

#### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

#### Printed Wiring Board Manufacturing

[www.pwbric.org](http://www.pwbric.org)

#### Printing

[www.pneac.org](http://www.pneac.org)

#### Ports

[www.portcompliance.org](http://www.portcompliance.org)

#### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

#### Hotlines, Helplines and Clearinghouses

[www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

#### Antimicrobial Information Hotline

[info-antimicrobial@epa.gov](mailto:info-antimicrobial@epa.gov) or  
1-703-308-6411

#### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

#### Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/  
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

#### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or  
734-214-4100

#### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

#### National Response Center Hotline - to report oil and hazardous substance spills

[www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

#### Pollution Prevention Information Clearinghouse (PPIC)

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or  
1-202-566-0799

#### Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.  
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

#### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996

### **Toxic Substances Control Act (TSCA) Hotline**

[tsca-hotline@epa.gov](mailto:tsca-hotline@epa.gov) or 1-202-554-1404

### **Wetlands Information Helpline**

[www.epa.gov/owow/wetlands/wetline.html](http://www.epa.gov/owow/wetlands/wetline.html) or 1-800-832-7828

### **State and Tribal Web-Based Resources**

#### **State Resource Locators**

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

#### **State Small Business Environmental Assistance Programs (SBEAPs)**

[www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

#### **EPA's Tribal Compliance Assistance Center**

[www.epa.gov/tribalcompliance/index.html](http://www.epa.gov/tribalcompliance/index.html)

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

#### **EPA's Tribal Portal**

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal helps users locate tribal-related information within EPA and other federal agencies.

### **EPA Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

#### **EPA's Small Business Compliance Policy**

[www.epa.gov/compliance/incentives/smallbusiness/index.html](http://www.epa.gov/compliance/incentives/smallbusiness/index.html)

This Policy offers small businesses special incentives to come into compliance voluntarily.

#### **EPA's Audit Policy**

[www.epa.gov/compliance/incentives/auditing/auditpolicy.html](http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### **Your Duty to Comply**

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*